

Company secretarial update

New website disclosures for AIM quoted companies

On 20 February 2007, the London Stock Exchange issued new rules for AIM quoted companies including new website disclosure obligations.....[click here](#)

More onerous duties for nominated advisers in relation to AIM quoted companies

On 20 February 2007, the London Stock Exchange (LSE) also issued new rules for AIM quoted companies regarding nominated advisers. These new rules have slightly changed the nominated advisers responsibilities towards the LSE and the AIM companies they represent. The changes are explained here.....[click here](#)

Impact of Transparency Directive on reporting deadlines for FTSE listed companies

The Transparency Directive, implemented on 20 January 2007, applies to FTSE listed companies within European Member States. The intention of the Transparency Directive is that the reporting regime across the EU capital markets will bring transparency and harmonisation.....[click here](#)

Changes affecting disclosure of directors' interests in shares and debentures

With effect from 6 April 2007, unlisted companies no longer need to maintain a register of directors' interests in the shares of the company or disclose this information in the company's annual report....[click here](#)

Disclosure of company information on emails and websites

From 1 January 2007, changes were made to the disclosure requirements relating to electronic communication by companies. These changes mean that the disclosure requirements will also now apply to company emails and websites, but what is the position in group situations?....[click here](#)

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New website disclosures for AIM quoted companies

Having completed a review of the operation of the Alternative Investment Market (AIM), the London Stock Exchange (LSE) issued three publications for AIM quoted companies on 20 February 2007. These are the new rules for AIM companies and nominated advisers and the disciplinary procedures and appeals handbook.

The new AIM rules for companies have introduced mandatory disclosure obligations setting out the requirements for the information which must be available free of charge on the company's website. These obligations apply to all AIM quoted companies, and companies have until 20 August 2007 to become compliant.

Information published on the AIM company website must now include:

- Description of the business.
- Names of the members of the board, including a brief biographical description and area of responsibility for each director, together with details of board committees, their membership and responsibilities.
- Country of incorporation and main country of operation (NB: where an AIM company's main quotation is not in the UK, shareholder rights may differ from one jurisdiction to another and details of UK shareholder rights should be given).
- Current constitutional documents (e.g. its memorandum and articles of association).

- Number of AIM securities in issue (noting any shares held in treasury), details of any significant shareholders (3% or above) and, in so far as the AIM company is aware, details of any of its securities that are not in public hands, including any restrictions on the transfer of its shares. This information must be updated at least every six months.
- Copies of the most recent annual report and all half yearly, quarterly or other reports published since the last annual report.
- All regulatory notifications made by the company in the last 12 months and its most recent admission documents together with circulars or similar publications sent to shareholders within the past 12 months.
- Details of the nominated adviser and other key advisers.

From the company's perspective, these changes potentially represent a significant burden, both in management time, as well as the set-up cost and maintenance of a website, which displays information clearly and is readily printable.

Action point

- Company secretaries should review their website to check whether it is compliant and if it is not, they should take steps to ensure compliance by the 20 August 2007 deadline.

More onerous duties for nominated advisers in relation to AIM quoted companies

The new Alternative Investment Market (AIM) rules for nominated advisers have consolidated and extended the duties and responsibilities of nominated advisers towards the London Stock Exchange (LSE) and the AIM companies they represent, both during admission to AIM and for the on-going continuing obligations of the company and its advisers.

Whilst AIM companies continue to be required to retain the services of an LSE nominated adviser, the rules now specify additional criteria which the LSE will apply when assessing the suitability of a nominated adviser and the role expected of the adviser when acting for the company. Compliance with these duties is now mandatory.

From the company's point of view the main impact of these rule changes is that nominated advisers have an increased responsibility to keep in regular contact with the AIM company for which it acts and assess whether it is being kept up to date with developments. This includes ensuring the directors and officers continue to understand their obligations under the AIM rules. In addition the nominated adviser is now required to exercise their duties with "due skill and care and after due and careful enquiry", which is a more onerous responsibility than under the previous rules.

For the first time, the reasons for a nominated adviser ceasing to act for an AIM company must be published on notification of its cessation to act. This could be potentially sensitive and damaging to the nominated adviser and the company.

In addition the new rules provide for the nominated advisers to advise the company on the appointment or removal of individual directors. In discharging this duty, the nominated adviser must assess that person's suitability to be a director of an AIM quoted company and their potential contribution to, and efficacy of, the board as a whole. As a result, nomination committees will be required to work more closely with the nominated advisers when any board changes are being considered.

These changes are designed to increase interaction between the nominated adviser and the company for which it acts. Some additional burdens will be placed on directors and company secretaries of AIM companies in relation to corporate governance matters and the level and quality of documents and information they will be expected to provide to their nominated adviser and shareholders.

Action points

Company secretaries should:

- Make sure the directors are aware of the increased responsibilities the new rules place on their nominated advisers.
- Work with their advisers to agree what further action and/or information the nominated advisers would need to discharge their heightened obligations.
- Make sure the terms of reference for the nomination committee include the requirement for appointment of directors and board succession planning to involve the nominated advisers.
- Consider what additional professional support the AIM company secretary needs.

Impact of the Transparency Directive on reporting deadlines for FTSE listed companies

The Transparency Directive (2004/109EC), implemented on 20 January 2007, applies to FTSE listed companies within European Member States. **The new reporting regime applies to financial years commencing on or after 20 January 2007.** The intention of the Transparency Directive is that the reporting regime across the EU capital markets will bring transparency and harmonisation.

So what does the Transparency Directive mean for UK FTSE listed companies?

There are four specific areas of change, which relate to:

- periodic financial reporting;
- disclosure of substantial shareholdings;
- dissemination of regulated information; and
- storage of regulated information.

This update will focus primarily on the periodic financial reporting changes.

UK listed companies will continue to file year end and half year accounts with the UK listing authority (UKLA), but the filing periods for these are reduced. There is a potential saving in that there is no longer a requirement to produce a preliminary statement, but companies may still wish to publish these for the benefit of their investors. If an issuer chooses to produce a preliminary statement, the UKLA will expect them to meet the existing content requirements. The biggest change, however, is with the introduction of the requirement for publication of interim management statements for issuers that do not produce quarterly reports. This new requirement may present practical timetable challenges for some companies.

Changes to periodic financial reporting

The main changes relating to the publication of periodic financial information applying to UK FTSE listed companies are:

- Annual report within four months of the end of its financial year (existing deadline is six months) and which must be available to the public for at least five years.
- Half yearly report covering information for the first six months of the financial year. This half yearly report must be published within two months of the half year end (existing deadline is 90 days) and must also be available for five years.
- Both these reports need to include a responsibility statement issued by two 'persons responsible' which will typically be two board directors.
- An interim management statement in each period of six months. Whilst no specific guidance is being given, these are not intended to replicate US quarterly financial statements, but should be similar to a trading update and akin to the type of statement made by retailers following Christmas. This would be prepared by the directors, on the company's recent performance and future prospects and include some financial information which should be both backward and forward looking, but not amount to the giving of financial projections.
- The interim management statement does not need to be audited nor will it be distributed to shareholders. The reporting timetable for the publication of this is between ten weeks after the beginning of, and six weeks before the end of, each relevant six month period.

The UKLA is likely to take a rigid view of compliance with these deadlines and may even consider suspending the listing of those that fail to meet the new filing regime.

For companies with a 31 December 2007 year end there is no change to the reporting timetable and they do not need to produce interim management statements until 2008.

Examples of reporting deadlines where the new reporting timetable applies

First example: An issuer with an accounting period from 1 February 2007 to 31 January 2008 should produce:

- **First interim management statement**
Due no earlier than 10 weeks after 1 February 2007 and no later than six weeks before 31 July 2007 – i.e. between 15 April and 15 June 2007.
- **Half yearly report**
1 February 2007 to 31 July 2007 to be filed by 30 September 2007.
- **Second interim management statement**
Due no earlier than 10 weeks after 1 August 2007 and no later than six weeks before 31 January 2008 i.e. between 15 October 2007 and 15 December 2007.
- **Annual report**
Due before 31 May 2008.

In this example, issuers with an accounting year end of 31 January 2008 should have already published their first interim management statement.

Impact of Transparency Directive on reporting deadlines for FTSE listed companies cont'd

Second example: An issuer with an accounting period from 1 January to 31 December 2008 should produce:

- **First interim management statement**
Due no earlier than 10 weeks after 1 January 2008 and no later than six weeks before 30 June 2008 – i.e. between 15 March and 15 May 2008.
- **Half yearly report**
1 January 2008 to 30 June 2008 to be filed by 31 August 2008.
- **Second interim management statement**
Due no earlier than 10 weeks after 1 July 2008 and no later than six weeks before 31 December 2008 i.e. between 15 September 2008 and 15 November 2008.
- **Annual report**
Due before 30 April 2009.

These examples show that boards which do not traditionally hold meetings over the summer may have to introduce meetings during prime holiday months. As a result of this new reporting requirement, company secretaries will have to take great care when planning future board meeting timetables.

Note that 'month' means a full calendar month, i.e. 30 days in June, 31 days in October and so on.

Action points

- Be prepared for reduced filing periods for annual and half yearly financial statements.
- Think about the content of the interim management statements.
- Consider revisions to the annual timetable and notify directors of new dates for board meetings.
- If the articles permit, consider holding telephone board meetings over the summer months and the establishment of a committee of the board to sign off non-material changes.
- Consider additional changes to reporting timetables for all non-FTSE subsidiary companies in the group under the new Companies Act 2006.

Changes affecting disclosure of directors' interests in shares and debentures

Notification of directors' interests/register of directors' interests

With effect from 6 April 2007, there is no longer any requirement for directors of unlisted companies to notify the company of the details of any shares or debentures they or their families hold in the company or any group companies. The relevant sections, being Sections 323 to 329 Companies Act 1985 and Parts 2 to 4 of Schedule 13 of that Act, were repealed by the Companies Act 2006 Second Commencement Order.

This means that there is no longer a requirement for the directors to give notice of their interests to the Company nor is there any requirement for the Company to maintain a register of directors' interests. This is welcome news for groups with many unlisted subsidiary companies and should reduce the administration burden for company secretaries.

Disclosure in the directors' report

Another saving for unlisted companies, which is also effective from 6 April 2007, is that there is now no requirement to disclose these holdings in the directors' report as this Commencement Order also repealed Clauses 2, 2A and 2B of Schedule 7 Companies Act 1985.

This change applies for all accounts approved on or after 6 April 2007.

It is worth noting however that FTSE listed companies and AIM quoted UK issuers are still required to disclose this information.

Action points

- Advise directors of unlisted companies of the abolition of the requirement to notify their interests to the company.
- Remind directors of quoted companies of the continued need for disclosure of their interests.
- Consider how you will track directors' interests if you no longer maintain a register, particularly if the company is planning a flotation.

Disclosure of company information on emails and websites

From 1 January 2007 changes were made to the disclosure requirements relating to electronic communication by companies by the First Company Law Amendment Directive. These changes mean that the disclosure requirements, as set out in Sections 349 and 351 Companies Act 1985 for corporate stationery, will also now apply to company emails and websites.

In summary, all emails and websites of registered companies must now contain the following information:

- The full name of the company.
- The company's place of registration and its registration number.
- The address of the company's registered office.
- If applicable, that the company is an investment company.
- If the company is a limited company exempt from using 'limited' in its name, its status should be made clear.
- If there is a reference to share capital, the reference must be to its paid-up share capital.

In addition, if the company uses its website for trading purposes, it should disclose its VAT number.

There are practical difficulties to overcome when there are several companies in a group. Group companies may find that if they need to list every company in the group they would have a very long email footer. Some companies are considering disclosing this information on a specific page on their website with the above required information for each subsidiary company.

Action points

- Ensure email and websites comply with the requirements.
- Agree your policy for group situations such as:
 - ▶ provide a link from the company's website to a web page detailing all the required information;
 - ▶ provide a link to this web page in each email footer; and
 - ▶ consider putting your main trading companies' details on your email footer and provide a link to this web page for non-trading companies' details.
- Seek advice as these regulations will be subject to judicial interpretation.

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